

SECTION 209
ECONOMIC ADJUSTMENT PROGRAM
REVOLVING LOAN FUND GRANTS
STANDARD TERMS AND CONDITIONS



DECEMBER, 1998

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A. Program Statement

These Standard Terms and Conditions apply to all Economic Adjustment Program awards for revolving loan fund activities funded under Section 209 of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, et seq.).

For the purpose of these Standard Terms and Conditions,

- (1) the term "Government" refers to the Economic Development Administration (EDA);
- (2) the term "Recipient" refers to the undersigned recipient of Government funds under the Agreement to which this attachment is made a part;
- (3) the term "Department" refers to the Department of Commerce;
- (4) the term "Regional Office" refers to the appropriate Regional Office of the Economic Development Administration;
- (5) the term "Federal Program Officer" refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award);
- (6) the term "Grants Officer" refers to the Assistant Secretary for Economic Development or his or her designated representative (the Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards);
- (7) the term "Project" refers to the activity for which the Government grant was awarded; and
- (8) "RLF" refers to this revolving loan fund grant project.

B. Overall Statutory and Executive Order Requirements

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations issued by a Federal agency and published in the Code of Federal Regulations. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, the statute or regulation.

The Recipient shall comply, and require any contractor which provides services on behalf of the Recipient to comply with all applicable Federal, state, territorial, and local laws, in particular, the following Federal public laws, the regulations issued thereunder, Executive Orders and OMB Circulars, and the requirements listed in Section 5 herein:

.01 EDA Statute and Regulations

Applicable provisions of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, et seq.) and regulations in 13 CFR, Chapter III.

.02 Administrative Requirements

Administrative requirements for grants, OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and its attachments, as amended or as superseded in the Department's regulations, or those found in

15 CFR Part 24, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as applicable. In the event of inconsistency or conflict between the administrative requirements and EDA's enabling legislation or regulations, the latter shall prevail;

.03 Civil Rights Requirements

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4); 15 CFR Part 8; Executive Orders 11246 and 11375; 41 CFR Part 60-4; P.L. 92-65, Section 112, prohibiting sex discrimination on programs under the Public Works and Economic Development Act; 13 CFR Part 317 imposing civil rights requirements on recipients; regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101, et seq.) 15 CFR Part 20; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under programs or activities receiving Federal financial assistance; and such other civil rights legislation, regulations, and Executive Orders as applicable;

.04 Hatch Act

Recipient will comply with the provisions of the Hatch Act (5 U.S.C. Section 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

C. General Requirements

.01 Grant Terms and Conditions

The Recipient and any consultant/contractor providing services on behalf of the Recipient shall comply with the Grant Award and all terms and conditions thereto. The decision of the Government in interpreting the terms and conditions of this grant shall be final.

.02 Compliance with EDA Instructions

The Recipient shall comply with EDA Revolving Loan Fund guidelines, manuals and other instructions as may be issued from time to time by the Government in connection with the assistance herein offered. All such instructions are to be applied on the effective date of the award.

.03 Exclusion from Certification and Disclosure requirements

An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) the Government with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101-121.

.04 Duplication of Work

The purpose and scope of work for which this award is made shall not duplicate programs for which monies have been received, committed, or applied for from other sources, public or

private. The Recipient shall submit full information about related programs that may be initiated within the award period. The Recipient shall immediately provide written notification to the Federal Program Officer in the event that other Federal financial assistance is received during the award period relative to the scope of work of this award.

.05 Reimbursement of Costs Prior to Award

Funds provided under this award shall not be used to pay for the cost of any work started or completed prior to the effective date of this award.

.06 Other Funding Sources

Federal-share funds budgeted or awarded for this Project shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal-share funds received under this Project.

.07 Availability of Information

The Recipient agrees that all information resulting from its activities and not exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 522, shall be made freely available to the public. This requirement is exclusive to the Recipient and is not applicable to confidential information disclosed or obtained in the normal borrower/lender relationship.

.08 Procurement Standards & Use of Consultants/Contractors

The procurement standards and procedures set forth in 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," Section 24.36 **or** OMB Circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Attachment O or its implementing Department regulation, as appropriate, shall apply to all awards. For all proposals and contracts where costs are expected to exceed the simplified acquisition threshold, the scope of work (request for proposal) and the cost of such must be submitted to and approved by the Government prior to employment of such consultants or contractors. The Recipient shall ensure that any consultant or contractor paid from funds provided under this award either directly or through program income is bound by all applicable award terms and conditions. The Government shall not be liable hereunder to a third party nor to any party other than the Recipient.

.09 Program Performance Notification

The Recipient shall inform the Government as soon as the following types of conditions become known:

- a. Problems, delays, or adverse conditions that materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any EDA assistance needed to resolve the situation.

- b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

.10 Attorney and Consultant Fees

The Recipient hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing this grant or other grants or cooperative agreements from EDA.

.11 Suspension and Termination of Grant

- a. When a Recipient has failed to comply with the grant award stipulations, standards, or conditions, EDA may, on reasonable notice to the Recipient, suspend the grant and withhold further payments, or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient or a decision to terminate in accordance with the following paragraphs. EDA shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of applicable OMB cost principles and the grant terms and conditions.
- b. Whenever the Recipient shall fail in its fiduciary responsibilities, or shall be unable or unwilling to perform, as trustee of this grant to serve the purpose of the Economic Adjustment program for which it was made, EDA may suspend, terminate or transfer this grant to an eligible successor Recipient, with jurisdiction over the Project area, to administer it as such trustee. The Recipient shall cooperate with EDA in accomplishing the transfer of this grant to such successor Recipient.
- c. EDA may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant (termination for cause). EDA shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Federal sponsoring agencies under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties. Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.
- d. In accordance with subsections C..11a, C..11b, and C..11c above, EDA may suspend or terminate any grant for cause based on, but not limited to, the following:
 - (1) failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings;
 - (2) failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF, as specified in the RLF Administrative Manual, as amended;
 - (3) failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement;
 - (4) failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds;

- (5) failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.
- e. EDA or the Recipient may terminate this grant in whole or, in part, when the parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds (termination for convenience). The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Recipient for the Federal share of the noncancelable obligations, properly incurred by the Recipient prior to termination.
- f. If there is a partial termination of the EDA grant, the full amount of the original nonfederal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by the Government.
- g. Other grant closeout procedures set forth in *15 CFR, Part 24*, or OMB Circular No. A-110, or its implementing Department regulation, as applicable, shall also apply.

D. RLF Requirements for Recipients and Borrowers

.01 Prudent Lending Practices

The Recipient agrees to administer the RLF in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures and recovery actions. The Recipient agrees to follow local laws and filing requirements to perfect and maintain security interests in RLF collateral.

.02 Inclusion of requirements in RLF Loan Documents

The Recipient agrees to incorporate *applicable* Federal requirements described herein in RLF loan agreements to ensure borrower compliance.

.03 Annual RLF Plan Certifications

The Recipient agrees to certify annually to the Government that the RLF is being operated in accordance with the RLF Plan (as referenced in the Special Terms and Conditions of the grant, as amended); and that the RLF Plan is consistent with, and supports, implementation of the current Economic Adjustment Strategy for the project area.

.04 RLF Plan Modifications

The Recipient agrees, because economic conditions change and new approaches to stimulating economic adjustment may be needed, to seek EDA approval of such modifications to the RLF Plan as may be required for the RLF to continue to be fully supportive of the area's Economic Adjustment Strategy, as updated and approved by EDA. The Recipient further agrees to request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

.05 Eligible Area

The Recipient shall use the RLF only in the areas eligible for Section 209 assistance as approved by the Government and defined in the Special Terms and Conditions of the grant. To add a new eligible area to a previously awarded RLF grant, the Recipient shall obtain the prior written approval of the Government. To ensure that the economic benefits of RLF loans remain within eligible lending areas, the Recipient shall include a provision in RLF loan documents to call loans if the economic activity financed is moved outside the eligible lending area.

.06 Relocation

The Recipient agrees that RLF funds shall not be used to relocate jobs from one commuting area to another. The Recipient shall include a provision in RLF loan documents to call loans if it is determined that

- a. the business used the RLF loan to relocate jobs from another commuting area or
- b. the economic activity financed is moved to another commuting area to the detriment of local workers.

.07 Grant Disbursement Schedule:

The Recipient agrees, unless otherwise specified in the Special Terms and Conditions of the grant award, to make loans in the initial round of lending at a rate such that no less than 50 percent of the grant funds are *disbursed* within 18 months, 80 percent within two years and 100 percent within three years of the date of the grant award. The Recipient acknowledges that if it fails to meet any of these disbursement deadlines, the Government will not disburse additional grant funds unless

- a. the funds are required to close loans approved prior to the deadline and which will be fully disbursed to the borrower(s) within 45 days, or
- b. the funds are required to meet continuing disbursement obligations on loans closed prior to the deadline, or
- c. the Government has approved in writing an extension of the deadline. In no event, will the time permitted for full disbursement of the grant funds extend beyond September 30, of the fifth year after the fiscal year of the grant award. Funds not disbursed in accordance with the foregoing will automatically be retained by the Federal Government.

.08 Capital Utilization Standard

Subsequent to full disbursement of the grant funds, the Recipient agrees to manage its repayment and lending activities to maintain 75 percent or more of the RLF capital loaned out or committed at all times, unless a different standard has been agreed to in writing by the Government. The Recipient agrees to comply with Government sanctions if the applicable capital utilization standard is not met within a reasonable time period.

.09 Civil Rights

The Recipient agrees that RLF funds will be made available on a nondiscriminatory basis and that no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, or sex. The Recipient agrees to market the RLF program to prospective minority and women borrowers. The Recipient shall include a provision in the RLF loan documents that

prohibits borrowers from discriminating against employees or applicants for employment or providers of goods and services. The Recipient agrees to monitor borrower compliance with civil rights laws.

.10 Environment

The Recipient shall develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91-190), as implemented by the "Regulations" of the President's Council on Environmental Quality (40 CFR Parts 1500-1508).

In addition, the Recipient shall indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of site(s) or construction, renovation or repair of any facility or site(s), if applicable, to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property;

The Recipient shall adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan shall provide for disapproval of any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. In administering the RLF, the Recipient shall adopt procedures to comply with applicable laws and statutes including, but not limited to, the following:

- a. The Clean Air Act, as amended (42 U.S.C. 7401 et seq.);
- b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.);
- c. The Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, et seq.);
- d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration;
- e. Executive Order 11990, Protection of Wetlands (May 24, 1977);
- f. The Endangered Species Act of 1973 P.L. 93-205, as amended (16 U.S.C. 1531, et seq.);
- g. The Safe Drinking Water Act, P.L. 93-523, as amended (42 U.S.C. 300f-300j-9);
- h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, et seq.);
- i. The Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended (42 U.S.C. 6901);

- j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96-510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601, et seq.) [As deemed necessary, the Recipient shall require compliance with EDA policy and procedures regarding the identification of hazardous and toxic waste on real property affected by RLF activities in accordance with EDA Directive 17.01, promulgated to reduce liabilities for environmental cleanup under CERCLA and SARA. This will require a certification to demonstrate a "due diligence" examination of project site(s) and for any environmental contamination that may affect real property for which EDA might be placed in the chain of title, or that is affected by EDA assisted construction activities.];
- k. The National Historic Preservation Act P.L. 89-665 (16 U.S.C. 470, et seq.), (36 CFR Part 800);
- l. Coastal Barriers Resources Act P.L. 97-348 (16 U.S.C. 3501, et seq.); and
- m. All state and local environmental review requirements with all applicable Federal, state and local standards. The Recipient shall ensure that potential borrowers' environmental submittal is reviewed. Should a proposed RLF project require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement/Report (EIS/EIR) in response to Federal, state or local requirements, the Recipient shall be responsible for ensuring compliance with the requirement prior to providing any loan assistance under the RLF.

.11 Earthquake Requirements

For use in new building construction projects: The Recipient is aware of and intends to comply with one of three model Codes outlined by the Committee on Seismic Safety in Construction (ICSSC): 1991 ICBO Uniform Building Code; 1992 Supplement to the BUCA National Building Code; or 1991 Amendments to the SBCC Standard Building Code.

.12 Flood Hazard Insurance

Where applicable, the Recipient shall require RLF borrowers to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93-234, as amended (42 U.S.C. 4002, et seq.);

.13 Davis-Bacon

The Recipient shall require borrowers to comply with the Davis-Bacon Act, as amended [40 U.S.C. 276a-276a-5); 42 U.S.C. 3222], when construction is financed in whole or in part by the RLF and when any related construction contract exceeds \$2,000.

.14 Contract Work Hours and Safety Standards Act & Anti-Kickback Act

The Recipient shall require borrowers to comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and with the Anti-Kickback Act, as amended (40 U.S.C. 276 (c); 18 U.S.C. 874);

.15 Access for the Handicapped

The Recipient shall ensure that if the RLF is used in whole or in part to finance a building or facility intended for use by the public or for the employment of physically handicapped, it must be accessible to the physically handicapped, pursuant to Public Law 90-480, as amended (42 U.S. C. 4151, et seq.), and the regulations issued thereunder;

.16 Conflict of Interest

- a. The Recipient shall not make RLF funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to the Recipient or an employee of the Recipient or any member of the Recipient's Board of Directors, or a member of any other Board (hereinafter referred to as "other Board") which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds.
- b. No officer, employee, or member of the Recipient's Board of Directors, or other Board, or person related to the officer, employee, or member of the Board by blood, marriage, law, or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to the Recipient on the public record the proposed or potential benefit and receives the Recipient's written determination that the benefit involved is not so substantial as to affect the integrity of the Recipient's decision process and of the services of the officer, employee or board member.
- c. An officer, employee or board member of the Recipient shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.
- d. Former board members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

E. Financial Requirements**.01 Budget**

The line item budget for this award is found in the budget summary of the grant award. Funds budgeted under the RLF portion of a grant shall be used for loan projects and, if specified, for audit costs related to the RLF, but shall not be used for other administrative costs related to the RLF.

.02 Method of Payment

Payments will be made by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System which transfers funds directly to a Recipient's bank account without regard to dollar amount. Initially, the Recipient must complete the Payment Information Form ACH Vendor Payment System (SF 3881) and return it to the EDA Regional Office. The award number must be included on the first line of the COMPANY INFORMATION section. The SF 3881 should first

be forwarded to the Recipient's bank so that the bank can fill in the FINANCIAL INSTITUTION INFORMATION section before returning the SF 3881 to the EDA Regional Office.

The completed SF 3881 shall be submitted together with the completed Request for Advance or Reimbursement (SF 270), to the EDA Regional Office. Subsequently, only a completed SF 270 is necessary to request a transfer of funds unless information on the original SF 3881 has changed.

Note: When completing SF 270 for an ACH/EFT transfer of funds, type "ACH/EFT" in Item No. 10 of the form to indicate a transfer of funds through the Automated Clearing House Electronic Funds Transfer System.

.03 Request For Budget Change

Request for budget changes must be submitted to the Federal Program Officer for approval. However, a budget change involving a reduction in the line item for audit costs for an equal increase in the RLF capital requires only written notification to the Government to be effective.

.04 Matching and Cost Sharing

a. Local Share

In affirming this award, the Recipient certifies that the non-Federal share of project costs is committed and is available as needed for the project, that the non-Federal share is from sources which can be used as match for the EDA project and that the non-Federal share is not encumbered or otherwise conditional.

b. To the extent applicable to this award, cash contributions by the Recipient are expected to be paid out at the same general rate as the Federal share, but in no event shall the Federal share be paid out at a faster rate than the Recipient's contribution. Any exceptions must be approved in writing by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash contributions.

c. The approved budget for this award is predicated normally upon a sharing of allowable costs. In the event allowable costs are less than the approved budget, the Federal share of this award will be limited to the Federal pro-rata share of the total allowable costs not to exceed the total Federal dollar amount reflected on the award document. However, consistent with Section C.11.f, the full amount of the nonfederal matching share will be expected to remain for use in the RLF unless otherwise provided for.

.05 Program Income

Program Income includes repayments of RLF loan principal and RLF Income (defined in Section E..06 below). Program Income, with the exception of *current* RLF Income, may be used only for relending and must be used by the Recipient (1) prior to requesting a disbursement of EDA grant funds, or (2) concurrently with the proceeds of such a disbursement.

.06 RLF Income

RLF Income is defined as interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The Recipient may use RLF Income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Special Terms and Conditions of the grant.

If RLF Income will be used to pay for RLF administrative expenses, the Recipient agrees to:

- (1) use RLF Income only for those administrative expenses incurred during the same twelve- month period in which it is earned, and
- (2) add any RLF Income remaining unexpended at the end of each period to the RLF capital base.

RLF Income added to the RLF capital base may not be withdrawn, other than for lending purposes, without the prior written consent of the Government. The Recipient should refer to current EDA administrative instructions regarding specification of the twelve- month accounting period, the format for documenting income and expenses and such reporting requirements as may be applicable.

.07 Indirect Costs

- a. The Recipient may use indirect costs as an eligible administrative expense chargeable against RLF Income if the indirect costs reflect an established indirect cost rate negotiated and approved by a cognizant Federal agency prior to the year end in which the costs are charged, subject to the limitation in subparagraph b. below.
- b. The Department's acceptance of negotiated rates as provided in this section is subject to total indirect costs not to exceed 100 percent of total direct costs charged against RLF Income. Where the indirect cost rate exceeds 100 percent, a 100 percent rate shall be used to compute the dollar amount of indirect costs.
- c. Excess indirect costs will not be used to offset unallowable or disallowed direct costs when the total allowable costs are determined.
- d. If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable OMB costs principles and the following subparagraphs:
 - (1) The Office of Inspector General (OIG) is authorized to negotiate indirect cost rates on behalf of the Department for those organizations which the Department is cognizant. The OIG will negotiate only fixed rates. The Recipient is required to submit to the OIG (with a copy of its transmittal letter provided to the Grants Officer) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates 90 days prior to the year end in which indirect

costs will be charged. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income for that year will not be allowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

- (2) When a Federal agency other than the Department of Commerce has responsibility for establishing an indirect cost rate, the Recipient is required to submit to that Federal agency (with a copy of its transmittal letter provided to the Grants Officer and the Department of Commerce OIG) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates within the Recipient's fiscal year during which indirect costs will be charged against RLF Income. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income will be unallowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

.08 Additional Funding and/or Extension of Award

The Government has no obligation to provide any additional funding in connection with this award. Any renewal of this award to increase funding or to extend the period of performance is at the sole discretion of the Government.

.09 Debts

- a. Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. A debt will be considered delinquent if it is not paid within 15 days of the due date. If the debt is not paid by the stated due date, the Recipient shall be subject to late payment charges imposed by the Federal Government. The late payment charges are as follows:
 - (1) Interest charge on the delinquent debt. As established by the Debt Collection Act of 1982, the minimum annual rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. The interest charge shall accrue from the date of the letter which notifies the debtor of the debt and the interest requirements. This rate is published in the Federal Register by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness;
 - (2) A penalty charge on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent; and
 - (3) An administrative charge to cover processing and handling of the amount due.
- b. State and local governments are not subject to subparagraphs E..09a.(2) and E..09a.(3) above.

- c. Once an account receivable has been established or a repayment agreement to pay the debt has been approved, failure to pay the debt by the due date on the billing may result in the suspension of payments to the Recipient under any current Department of Commerce awards and/or placement of the Recipient on a Reimbursement Only by Treasury Check method of payment until the debt is paid.
- d. If a debt is over 30 days old, any Department of Commerce awards to the Recipient may be suspended and the Recipient may be suspended or debarred from further Federal financial and non financial assistance and benefits, as provided in 15 CFR Part 26, until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the agreement. Failure to pay the debt or establish a repayment agreement by the due date will also result in the referral of the debt for collection action.
- e. Payment of the debt may not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

.10 Interest-Bearing Accounts

All RLF grant funds disbursed to *reimburse* Recipients for loan obligations already incurred must be held in interest bearing accounts until disbursed to the borrower. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the Recipient's account. Interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes per 15 CFR Part 24, and \$250 for those subject to OMB Circular A-110 or its implementing Department regulation) and shall be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word INTEREST in order to identify the check in question as remittance of interest income. Checks will be sent to the address below:

ECONOMIC DEVELOPMENT ADMINISTRATION
P.O. BOX 100202
ATLANTA, GEORGIA 30384

.11 Bonding and Payment of Funds

Prior to payment of funds hereunder, the Recipient shall provide evidence to the Government that it has fidelity bond coverage of persons authorized to handle funds under this award in an amount determined by the Government sufficient to protect the interests of the RLF and the Government.

.12 Grant Violations and Ineligible Costs

The Recipient hereby agrees that the Government may, at its option, withhold disbursement of any award funds if the Government learns, or has knowledge, that the Recipient has failed to comply in any manner with any provision of the award. The Government will withhold funds

until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs which were paid from award funds. If a violation occurs or an ineligible expenditure is made subsequent to full disbursement of the grant, the Government, at its option, may elect to have the Recipient repay the RLF for the amount of any ineligible cost incurred. Failure to remedy an ineligible expenditure or grant violation will be grounds for suspension and/or termination.

F. Reporting Requirements

Financial and Performance Reports must be submitted according to the schedule indicated below. Failure to submit required reports in a timely manner may result in:

- (1) withholding payments under this award,
- (2) deferring the processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s),
- (3) establishing an account receivable for the difference between the total Federal share of Outlays last reported and the amount disbursed, and/or,
- (4) suspending or terminating the grant in whole, or in part.

.01 Financial and Performance Reports

The Recipient shall submit financial and status reports to the EDA Regional Office **semiannually** unless otherwise instructed by the Government. The reports will be in a form prescribed by the Government and shall be submitted for a minimum of one year following full disbursement of the grant. Subsequently, the Recipient may be eligible for graduation to a shortened, **annual** reporting format at the discretion of the Federal Program Officer. Graduation to the annual report will be based on an assessment of the Recipient's track record and on current RLF operations. The Recipient must obtain written authorization from the Government to convert to the annual reporting option.

Subsequently, the Recipient shall submit annual reports for the duration of the RLF unless the Federal Program Officer determines that more frequent and/or detailed reporting is necessary due to grant violations or other problems. Following remedial action, the Recipient may request the Federal Program Officer to convert back to annual reporting.

a. Initial Semiannual Report

Except for recapitalization awards, the Recipient shall submit the initial semiannual report on April 30, covering loan activity for the period ending March 31, (if the grant was awarded from April 1, through September 30), and on October 31, covering loan activity for the period ending September 30, (if the grant was awarded from October 1, through March 31).

b. Subsequent Semiannual Reports

Following the initial report, other than for recapitalization awards, the Recipient shall submit subsequent semiannual reports on either April 30, or October 31, covering RLF activity for the periods ending March 31, and September 30, respectively.

c. Annual Reports

If authorized by the Government, the Recipient shall submit annual reports in place of semiannual reports as instructed by the Government.

d. Performance Measures

The Recipient agrees to submit to EDA as part of the semiannual or annual reports referenced in Sections 15, 15, and 15 above, the information identified as the Core Performance Measures listed below. EDA will advise the Recipient in writing, not less than 90 days prior to the time for submission, in the event there are any modifications in the information required to be submitted.

- (1) Performance and Outcomes at the Completion of the Initial Round of Funding¹
 - ! Compliance with implementation schedule for disbursement of RLF dollars.
 - ! Jobs created and saved (actual) through RLF loans.
 - ! Number of loans made by the RLF.
 - ! Non-RLF dollars leveraged by the RLF loan.
 1. Private sector dollars
 2. Other dollars leveraged
 - ! RLF Capital Base (total RLF funding + program income - loan writeoffs).
- (2) Project Outcomes after Full Disbursement of Grant
 - ! Jobs created and saved (actual) through RLF loans.
 - ! Number of loans made by the RLF.
 - ! Non-RLF dollars leveraged by the RLF loan.
 1. Private sector dollars
 2. Other dollars leveraged
 - ! RLF Capital Base (total RLF funding + program income - loan writeoffs).

.02 Other Reports

The Recipient agrees to submit other reports, as may be required from time to time, to the Government.

.03 Subcontracting Reports

Recipients of awards which involve both Federal financial assistance valued at \$500,000 or more and procurement of supplies, equipment, construction or services shall be required to submit the SF-334, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance." Reports shall be submitted on a quarterly basis for the period ending March 31, June 30, September 30, and December 31. Reports are due no later than 30 days following the end of the reporting period during which any procurement in excess of \$10,000 is executed under this award. The report should be submitted in duplicate to the EDA Regional Office.

¹ Full disbursement of the grant award.

G. Administrative Cost and Loan Records Retention

.01 Administrative Cost Records

Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three years from the date of disposition, replacement, or transfer of the equipment.

.02 Loan Records

Loan files and related documents and records shall be retained over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of:

- (1) full payment of the principal, interest, fees, penalties, and other fees or costs associated with the loan; or
- (2) final settlement or write-off of any unpaid amounts associated with the loan.

.03 General

If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year (or five-year) period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year (or five-year) period, whichever is later.

The record retention periods described in this section (**Administrative Cost and Loan Records Retention**) are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three years old, unless fraud is an issue.

H. Audit

The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

.01 Requirements

a. Federal Audit

Under the Inspector General Act of 1978, as amended, 5 USC App. I, section 1 et seq., an audit of this award may be conducted at any time. The Office of Inspector General usually will make the arrangements to audit this award, whether the audit is performed by Inspector General

personnel, an independent accountant under contract with the Department, or any other Federal, State or local audit entity.

b. Recipient Audit:

- (1) For awards to institutions of higher education, and other nonprofit organizations, the Recipient is subject to the audit requirements found at 15 CFR Part 29b; for awards to governmental entities, the Recipient is subject to the audit requirements found at 15 CFR Part 29a.
- (2) Any audit report performed in compliance with the requirements of 15 CFR Part 29a or Part 29b shall be sent to the cognizant Federal agency and to the Federal Program Officer. A copy of the transmittal letter to the cognizant Federal agency should be provided to the Grants Officer. If the Department of Commerce is the cognizant Federal agency, the audit report should be sent to the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, Indiana 47132

- (3) For awards where a special award condition stipulates that an audit be conducted of this particular award, the Recipient shall arrange for an audit of the award in accordance with Governmental auditing standards.

.02 Establishment and Collection of Audit-Related Debts

- a. An audit of this award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due the Government. For this reason, a Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed and the Recipient has the opportunity to comment.
- b. A Recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - (1) Unless the Inspector General determines otherwise, the Recipient will be given 30 days from the transmittal of the **draft** audit report in which to submit written comments and documentary evidence.
 - (2) The Recipient will be given 30 days from the transmittal of the **final** audit report in which to submit written comments and documentary evidence. There will be no extension of this deadline. Based on all of the evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

- (3) The Government's decisions to disallow costs under the award and to establish a debt (as well as its decisions on non financial issues) will be sent to the Recipient in an Audit Resolution Determination letter. The Recipient will be given 30 days from the transmittal of this letter in which to pay any debt. This letter will contain information on the procedures to be followed by the Recipient to appeal the Department's decisions. An appeal does not preclude the Recipient's obligation to pay the debt nor does the appeal preclude the accrual of interest on the debt. The appeal must be submitted to the Grants Officer and the Office of Inspector General within 30 days after receipt of the Audit Resolution Determination letter. There will be no extension of this deadline. This appeal is the last opportunity for the Recipient to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.
 - (4) After the opportunity to appeal has expired, or after the final decision on reconsideration has been made, the Department will not accept any submissions from the Recipient concerning its dispute of the Department's decisions on the settlement of costs under the award. If the debt is not paid, the Department will undertake other collection action but will not thereafter reconsider the legal validity of the debt.
- c. There are no other administrative appeals available in the Department of Commerce concerning this matter.

I. Miscellaneous Items

.01 Programmatic Changes

All requests by the Recipient for programmatic changes must be submitted to the Government which will notify the Recipient in writing of the determination.

.02 Name Check Review:

- a. A name check review shall be performed by the Office of Inspector General on key individuals associated with non profit organizations.
- b. The Department reserves the right to take any of the actions described in subparagraph I..02c below if one of the following occurs as a result of the name check review:
 - (1) Any of the key individuals associated with non profit organizations who are not exempt from the name check review fails to submit the Form CD-346 and, if required, the Form FD-258;
 - (2) The Recipient, key individual, or any other person associated with this award made an incorrect statement or omitted a material fact on the Form CD-346 or Form FD-258; or

- (3) Significant adverse findings result from the name check review that reflect on the integrity or responsibility of the Recipient and/or key individual.
- c. In the event of significant adverse findings from the name check review, the Government, at its discretion, may take one or more of the following actions:
- (1) Terminate the award immediately for cause;
 - (2) Require the removal from association with the management of and/or implementation of the Project any person or persons and, if appropriate, require that the Grants Officer be afforded the right of final approval of any person or persons to replace any individual removed as a result of this condition; and/or
 - (3) Make appropriate provisions or revisions at the Government's discretion with respect to method of payment and/or financial reporting requirements.

.03 Prohibition Against Assignment

Notwithstanding any other provision of this award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign this award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

.04 Covenant Against Contingent Fees

Unless otherwise specified in the Special Award Conditions, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial, or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of the warrant, the Government shall have the right to cancel this award without liability or, at its discretion, to deduct from the award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

.05 Officials Not To Benefit

No member of or delegate to Congress or resident Federal Commissioner shall be admitted to any share or part of this award or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this award if made to a corporation, education, or nonprofit institution for its general benefit.

.06 Sub-Award and/or Contract to Other Federal Agencies:

- a. The Recipient, subrecipient, contractor and/or subcontractor shall not sub-grant or subcontract the Project in whole or in any part to any agency of the Department of Commerce.
- b. The Recipient, subrecipient, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the Project to any other Federal department, agency or instrumentality, without the advance written approval of the Grants Officer.

.07 Property Management

The Recipient may utilize RLF Income generated from loan activities to acquire property necessary to administer the RLF. Neither grant funds nor match funds shall be used to purchase property for RLF administration. RLF Income (defined in Section E..06) can only be used to acquire necessary RLF property to the extent of the benefits received.

Eligible property for RLF activities will normally include:

- (1) Expendable Personal Property (which includes all tangible personal property, including supplies, other than nonexpendable property), and
- (2) Nonexpendable Personal Property (which includes tangible personal property, including equipment).

Title to Expendable and Nonexpendable Personal Property acquired in whole or in part with RLF Income for use in the RLF shall vest with the Recipient. The Recipient shall not encumber its title or other interests in RLF property without prior written approval from the Government. The Recipient shall use and manage nonexpendable personal property as long as needed and shall maintain nonexpendable personal property records, control systems and physical inventories.

b. Disposition of Personal Property

In the ordinary course of business, the Recipient may dispose of personal property for upgrading purposes or when no longer needed for the project activity. The RLFs share of the proceeds from any disposition shall be treated as a contribution to RLF Income and may be returned to the RLF for lending or used for RLF administrative expenses.

c. Disposition of Expendable and Nonexpendable Property Under RLF Termination

If the RLF is terminated, the Recipient shall submit a request for disposition instructions to the Federal Program Officer who shall provide the Recipient with disposition instructions.

Disposition may include one of the following

- (1) If the total aggregate fair market value of unused personal property at the termination of the RLF is \$1,000 or less for awards subject to OMB Circular A-110 or any Department rule superseding such Circular, or \$5,000 or less for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain or sell the expendable personal property without compensating the Government.
- (2) If the total aggregate fair market value of personal property at the termination of the award exceeds \$1,000 for awards subject to OMB Circular A-110 or any Department rule superseding such Circular, or \$5,000 for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain, sell, or otherwise dispose of the property and shall compensate the Government for its share.
- (3) The following apply only to the disposition of *nonexpendable personal property*:

- ! The Recipient shall submit a completed form CD-281, "Report of Government Property in Possession of Contractor" along with the request for disposition instructions.
- ! The Government's disposition instructions may additionally include the following:
 1. The Recipient may be instructed to ship the nonexpendable personal property elsewhere. The Recipient may receive the nonfederal share of the market value plus shipping costs; or
 2. for awards subject to the provisions of OMB Circular A-110 or Department regulation superseding such Circular, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency if the nonexpendable personal property had a unit acquisition cost of \$1,000 or more. For awards subject to 15 CFR Part 24, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency for any nonexpendable personal property. When title is transferred, the Recipient shall be compensated for its share.

d. Disposition of Real Property Under RLF Termination

If the RLF is terminated and the Recipient holds title to real property through foreclosure or other legal actions, the Recipient shall request disposition instructions from the Regional Program Officer. Disposition may include one of the following:

- (1) The Recipient shall retain title after it compensates the Federal Government for its share;
- (2) The Recipient shall sell the property and pay the Federal Government for its share after the deduction of any actual and reasonable selling and fix-up expenses, if any, from the sales proceeds; or
- (3) The Recipient shall transfer title to the property to the Federal Government provided that in such cases the Recipient shall be entitled to compensation computed by applying the Recipient's percentage of participation in the cost of the project to the current fair market value of the property.

e. Debt Instruments Under RLF Termination

If the RLF is terminated, the Recipient shall request disposition instructions from the Regional Program Officer for disposition of debt instruments in the RLF portfolio.

.08 Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

The policy and procedures set forth in Department of Commerce regulations 37 CFR Part 401, Rights to Inventions made by Nonprofit Organizations and Small Business Firms under

Government Grants, Contracts, and Cooperative Agreements, published in the Federal Register on March 18, 1987, shall apply to all grants and cooperative agreements made where the purpose is experimental, developmental, or research work.

Pursuant to Executive Order 12899, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its financial assistance Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the Department Patent Counsel at the following address, with a copy to the Grants Officer:

U.S. Department of Commerce
Office of Chief Counsel for Technology
Patent Counsel
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

The notification shall include the following information:

- a. The award number
- b. The name of the Department awarding agency
- c. A copy of the patent
- d. A description of how the patented technology was used
- e. The name of the Recipient contact, including an address and telephone number

.09 Executive Order 12432, Minority Business Enterprise

In support of Executive Order 12432, signed by the President on July 14, 1983, the Department of Commerce encourages all Recipients to utilize minority firms and enterprises in contracts under grants and cooperative agreements. The Office of Program Development, Minority Business Development Agency, will assist Recipients in matching qualified minority enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
Minority Business Development Agency
Office of Program Development, Herbert C. Hoover Building
14th Street and Constitution Avenue, NW
Washington, D.C. 20230

.10 Internal Revenue Service (IRS) Information:

- a. A Recipient classified for tax purposes as an individual, partnership, proprietorship, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number or employer identification number as applicable) on Form W-9, "Payer's Request for Taxpayer Identification Number." Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this

requirement. The Recipient should submit the form to the Grants Officer within 60 days of the effective date of award. The Department provides the Recipient's TIN to the IRS on Form 1099-G, "Statement for Recipients of Certain Government Payments." Applicable Recipients who either fail to provide their taxpayer identification number or provide an incorrect number may not be eligible for funding or have funding suspended until the requirement is met.

- b. Privacy Act Statement - Mandatory Disclosure, Authority, Purpose, and Uses: Disclosure of your social security number or employer identification number is mandatory for Federal income tax reporting purposes under the authority of 26 USC, Section 6011 and 6109(d), and 26 CFR Part 301, Section 301.6109-1. This is to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Commerce or paid interest under the Prompt Payment Act. A Recipient who either fails to provide the taxpayer identification number or provides an incorrect number may not be eligible for funding or have funding suspended until requirement is met. This information is being provided to the Internal Revenue Service on Form 1099.

.11 Government wide Debarment, Suspension and Other Responsibility Matters (Nonprocurement):

- a. This award is subject to Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." A person (as defined at 15 CFR §26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the Department.
- b. The Recipient shall provide immediate notification to the Grants Officer if at any time the Recipient learns that its certification, Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," was erroneous when submitted or has become erroneous by reason of changed circumstances. Subrecipients in lower tier transactions shall provide the same updated notice to the Recipient.
- c. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§26.215, 26.220, and/or 26.625, the Recipient of this award shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR Part 26.215. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate.
- d. The Recipient shall require each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the \$100,000 small purchase threshold

unless the subtier Recipient will have a critical influence on or substantive control over) at any tier under this award to file a certification, Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying," without modification, for it and its principals in any proposal/solicitation submitted in connection with the lower tier covered transaction. Certifications shall be retained by the Recipient.

- e. The Recipient shall include the following provisions regarding debarment and suspension in all subtier covered transactions:
- (1) This lower tier covered transaction is subject to Executive Order 12549, "Debarment and Suspension," and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." Unless authorized by the Department in writing, a person (as defined at 15 CFR §26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized by the Department.
 - (2) Unless the Department authorizes in writing an exception in accordance with 15 CFR §§26.215, 26.220, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient of this sub-award shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR §26.215.
- f. The Recipient shall include the following provision in each application and in each bid for a lower tier covered transaction at any tier under this award:

Each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the \$100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over the award) at any tier under this Federal award must file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying," without modification, at the time of application/bid.

Applicants/bidders should review the instructions for certification included in the regulations before completing the certification. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Certifications shall be retained by the Recipient.

.12 Restrictions on Lobbying

(applicable to awards exceeding \$100,000 in Federal funding)

- a. This award is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. The Recipient of this award and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.
- b. The Recipient shall require each person who requests or receives from the Recipient a sub-grant, contract, or subcontract exceeding \$100,000 of Federal funds at any tier under this award, to file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying," without modification, and, if applicable, SF-LLL, "Disclosure of Lobbying Activities," form regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient, who shall forward all disclosure forms to the Grants Officer.
- c. The Recipient shall include the following provision in all contracts, subcontracts, or sub-grants:

This contract, subcontract, or sub-grant is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. Each bidder/applicant/recipient of this contract, subcontract, or sub-grant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

- d. The Recipient shall include the following contract clauses regarding lobbying in each application for a sub-grant and in each bid for a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award:

Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award must file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying," and Standard Form-LLL, "Disclosure of Lobbying Activities," regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer.

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal award (grant), who shall forward all disclosure forms to the Grants Officer.